



**MINUTES OF THE SPECIAL MEETING
OF THE
CIVIL SERVICE BOARD OF THE CITY OF ALAMEDA
THURSDAY, JULY 28, 2011**

1. The meeting was called to order at 6:19 p.m. by Board President Avonnet Peeler
2. **ROLL CALL:** President Avonnet Peeler, Vice President Peter Horikoshi, Member Dean Batchelor, Member Linda McHugh, and Executive Secretary Karen Willis.

ALSO IN ATTENDANCE: Craig Judson, Legal Counsel to the Civil Service Board

ABSENT: Member Jose Villaflor

STAFF PRESENT: Susan Freeman, Senior Management Analyst

3. **MINUTES:** There were no minutes for approval.

4. **REGULAR AGENDA ITEMS**

- 4-A. Presentation to the Board by Legal Counsel regarding Disciplinary Appeal hearing Procedures

Mr. Craig Judson, legal counsel to the Board stated that were two items he would cover. One is a procedural issue regarding the absence of a member of the Board and whether or not the hearing will go forward. He said that this would be covered when all of the parties are present. The second is a briefing on the disciplinary appeal hearing procedures.

Mr. Judson explained that the hearing scheduled before the Board is an appeal of disciplinary action taken and that this hearing is all about due process. In accordance with state and federal law, due process requires a fair and impartial hearing from a process standpoint. The Board is serving in a Judicial/Appellant capacity and its role is to be fair and open-minded. The overriding issue with due process is to have hearing procedures that are fair and consistent. He explained that this means that everyone should have the opportunity to be heard and to be able to offer rebuttal to any evidence presented.

Mr. Judson then explained how important the issue of confidentiality is with these hearings. He told the Board that there were two primary individuals involved with this issue and protecting their confidentiality is paramount. He stated that the hearing will be closed unless the appellant has requested the hearing to be open. Mr. Judson emphasized that this appeal should not be discussed outside of the hearing and that the Board should only discuss the information from this appeal during deliberations which will be held in closed session.

Mr. Judson then went over the hearing procedures handout and made modifications to these procedures. He explained that briefs were received earlier that day from both sides and that the Board would be provided with an opportunity to read the briefs. He emphasized to the Board

that briefs are not evidence. He stated that the briefs would provide the Board with background information and a preview of arguments and evidence that would be presented.

Mr. Judson then went over the hearing procedures handout. He stated that each side has the option for an opening statement if they choose. He stated that the City would present its case first and present any witness testimony. With each witness there would be an opportunity for each side to cross-examine the witness followed by questions from the Board, if any. Then the City would be able to redirect. It is not rebuttal as shown on the handout. This is followed by the Appellant's re-cross examination. A redirect follows the scope of the prior re-cross examination. New issues cannot be brought up while under re-cross examination. This process can go multiple rounds. Mr. Judson explained that after that process is concluded then the Appellant makes their presentation and the process repeats itself. At the end, there is an opportunity for the City to offer any rebuttal to the Appellant's case. This is the time for the City to re-butt any facts or evidence presented by the Appellant. Then the same process is followed for re-cross examination, redirect, and re-cross as appropriate until the closing arguments. Mr. Judson explained that the closing arguments are like the opening statements in that there is no obligation to present a closing argument. The opening statement is a preview of the evidence to be presented and the closing argument summarizes what the evidence showed.

A copy of the revised Civil Service Board Hearing Procedures is attached to these minutes.

Mr. Judson then addressed the procedural issue regarding having an even number of Board members to hear the appeal. He told the Board that there are five members of the Board but only four present for the hearing. The rules require that there be three affirmative votes to take action. The concern is what to do if after Board deliberation, there is a 2 – 2 tie. If that happens, the hearing would need to be set aside, similar to a mistrial and would have to be heard again on another date. Mr. Judson stated that a discussion was held with legal counsels on proceeding with the hearing with three Board members versus four. He stated that this could be an issue because an objection could be raised that this is a deprivation of due process because the rules provide for a hearing by the Civil Service Board. If the case goes to Court, it could be argued that anything less than all five members is a subcommittee of the Board and not a full Board. Mr. Judson pointed out that this issue will need to be raised when both attorneys are present to see how they wish to precede. If the decision is made to go forward, then the Board will need to go over the process and make sure there is a proper waiver from the Appellant showing that he understands the implications of moving forward.

Mr. Judson emphasized again that the Board's role and the role of these whole proceedings are for due process and fairness at every step. He stated that if these rules are not followed, then the party's unfavorable results could proceed into Court. It is important that whatever decision the Board makes, either upholding the appeal or upholding the prior decision that it be done in the proper context.

President Peeler called for a recess at 6:36 p.m.

RECESS

At this time the Board was provided copies of the briefs presented by the parties.

RECONVENE FROM RECESS INTO CLOSED SESSION

Closed Session called to order by President Peeler at 7:10 p.m.

ALSO IN ATTENDANCE: Legal Counsel for the City Joe Wiley, Legal Counsel for the Appellant Desiree Cox, and the Appellant.

5. **DISCIPLINARY APPEAL HEARING:**

5-A. Public Employee Discipline/Dismissal/Release Hearing (Gov. Code 54957)

Joe Wiley addressed the Board and asked for a continuation of the hearing until such time as all five members of the Board could be present. Mr. Wiley explained that should the Board end in a 2 – 2 tie, then the appellant would be entitled to a new hearing. He stated that this would be rather costly for the City and was asking for the Board's consideration of this matter. Mr. Wiley stated that he had discussed this action with the appellant's legal counsel, Ms. Desiree Cox and she concurred. Ms. Cox addressed the Board to reiterate what Mr. Wiley had said and to let the Board know that she was in agreement.

Discussion ensued on how to ensure that all five members of the Board would commit to a date and time certain for the continuation hearing date. The Board members present and the respective parties provided dates to Executive Secretary Willis so that she could get a commitment from the absent Board member.

Mr. Judson asked if the appellant understood and could acknowledge that he was in agreement to postpone the hearing until all five Board members could be present and that this would not prejudice his appeal. The appellant verbally agreed.

Motion to continue the hearing was made by President Peeler, Member McHugh seconded and the motion carried 4 -0.

6. **ORAL COMMUNICATIONS, NON-AGENDA (PUBLIC COMMENT)**

There was no one present from the public.

7. **CIVIL SERVICE BOARD COMMUNICATIONS (COMMUNICATIONS FROM BOARD)**

There was no communication from the Board.

8. **CIVIL SERVICE BOARD COMMUNICATIONS (COMMUNICATIONS FROM STAFF)**

There was no communication from staff.

9. President Peeler adjourned the meeting at 7:30 p.m.

Respectfully submitted,



Karen Willis
Human Resources Director &
Executive Secretary to the Civil Service Board

Attachment: Civil Service Board Hearing Procedures